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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

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Division Director

March 22, 2016

Raphael Cordray
Utah Tar Sands Resistance
utahtarsandsresistance@gmail.com
Sent by electronic mail only

Subject: Request for Agency Action and Formal Complaint, MCW Energy Group, Non-permitted Processing Operation, Uintah County, Utah

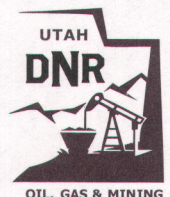
Dear Ms. Cordray:

On March 17, 2016, the Utah Division of Oil, Gas and Mining (Division) received by electronic mail your "Formal Complaint and Request for Action Against MCW Energy Group." The document alleges that MCW Energy is operating a tar sands processing plant near Vernal in violation of state and federal environmental law and regulations and that MCW Energy is performing unlawful activity by building and operating a tar processing facility without environmental permits.

The document does not specify the location of the operation, but the Division assumes it is a processing facility west of Maeser north of State Highway 121.

The Division does not believe it has the legal authority or jurisdiction to regulate this facility. The definition of "mining operation" in Utah Code 40-8-4(14)(a) and (b) is:

- (a) "Mining operation" means activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining, *on-site transportation, concentrating, milling, evaporation, and other primary processing.*
- (b) "Mining operation" does not include:
 - (i) the extraction of sand, gravel, and rock aggregate;
 - (ii) the extraction of oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining;
 - (iii) the extraction of geothermal steam;
 - (iv) smelting or refining operations;



- (v) *off-site operations and transportation*;
- (vi) reconnaissance activities; or
- (vii) activities which will not cause significant surface resource disturbance or involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes. (Emphasis added.)

Please note in this definition that mining operations include on-site primary processing but do not include off-site operations.

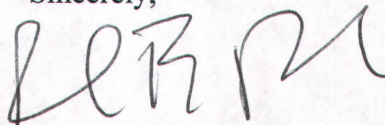
The processing facility near Maeser is about two miles from the nearest mine, the Uintah County Asphalt mine whose operator is Tar Sands Holdings II, file number M/047/0022, so the Division considers the Maeser facility to be an off-site operation not subject to the Utah Mined Land Reclamation Act.

Additionally, the Utah Administrative Procedures Act and Utah Administrative Code, at Rule R647-5-104.2.13, explain the requirements for filing a Request for Agency Action. The "Request for Action" filed by Utah Tar Sands Resistance does not meet the requirements for a Request for Agency Action. For instance:

- (a) It does not include a certificate of mailing.
- (b) It does not include a statement of the legal authority and jurisdiction under which Division action is requested.
- (c) It does not state the relief or action sought from the Division.

The Division takes alleged violations of mining law seriously. For the above reasons, however, the Division cannot commence an adjudication or take other action pursuant to your letter. Please contact me at 801-538-5261, or John Robinson or Melissa Reynolds, Assistant Attorneys General, at 801-538-7227, if you have questions concerning this letter.

Sincerely,



Paul Baker
Minerals Program Manager

PBB: eb

cc: John Robinson and Melissa Reynolds, Assistant Attorneys General
April Abate
Dana Dean

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